

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
DECEMBER 13, 2006**

ITEM 10

SUBJECT

IN THE MATTER OF PETITION OF CHEVRON PRODUCTS COMPANY (TECHNICAL REPORT ORDER FOR 4000 PORTOLA DRIVE, SANTA CRUZ), CENTRAL COAST REGION. SWRCB/OCC FILE A-1343

DISCUSSION

On May 20, 2004, the State Water Board adopted Order No. WQO 2004-0005, a non-precedential order vacating a technical report order issued by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) on November 9, 2000. The technical report order required Chevron Products Company (Chevron) to take investigative and remedial actions at a site on which Chevron previously operated a service station. Following issuance of Order No. WQO 2004-0005, Bob Rudolph Enterprises filed a petition for writ of administrative mandamus with the Superior Court of California, County of Santa Cruz (Court). On March 21, 2006, the Court issued an order directing the State Water Board to remand the matter to the Central Coast Water Board for clarification and to subsequently review its earlier order.

On June 7, 2006, the State Water Board adopted Order No. WQ 2006-0006, implementing the Court's requirement to remand the matter. On August 9, 2006, the Executive Officer of the Central Coast Water Board revised the November 9, 2000, letter. The revised letter requests (but does not require) submission of a status report and specifies that no actions are being ordered. Therefore, the revised letter is not a final action of the Central Coast Water Board and is not subject to review by the State Water Board. The draft order would dismiss the petition on this basis.

POLICY ISSUE

Should the State Water Board adopt the proposed order dismissing the petition?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

Central Coast Water Board

STAFF RECOMMENDATION

Adopt the order as proposed.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**ORDER WQ 2006-**

In the Matter of the Petition of

CHEVRON PRODUCTS COMPANY

For Review of Technical Report Order For
4000 Portola Drive, Santa Cruz
Issued by the
California Regional Water Quality Control Board,
Central Coast Region

SWRCB/OCC FILE A-1343

BY THE BOARD:

Chevron USA (Chevron) seeks review of a letter issued by the Executive Officer of the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) on November 9, 2000, and revised on August 9, 2006. The letter requests that Chevron submit a status report relating to the investigation and cleanup of petroleum hydrocarbon contamination on the site of a former Chevron station in Santa Cruz. This Order dismisses Chevron's petition because the letter is not a final action subject to review.

I. BACKGROUND

Chevron operated a service station at 4000 Portola Drive in Santa Cruz from approximately 1953 to 1972. The site was developed with a commercial building in 1978. Another former gasoline retail site is located across the street to the north at 4001 Portola Drive. That site is owned by Robert Rudolph Enterprises and has been the subject of ongoing investigation and remediation for releases of petroleum hydrocarbons since the removal of that station's underground storage tanks in 1992. In November 2000, the Central Coast Water Board Executive Officer issued a letter order directing Chevron to undertake activities related to investigation and cleanup at its former site.¹ On December 7, 2000, Chevron timely filed a

¹ Roger W. Briggs, Executive Officer, Central Coast Water Board, to Mark R. Lafferty, Project Manager, Chevron Products Company, November 9, 2000.

petition to the State Water Resources Control Board (State Water Board) contending that Chevron was not responsible and that the contamination originated off-site.

The State Water Board issued an order in May 2004 and litigation ensued.² On March 21, 2006, the Superior Court for the County of Santa Cruz (Court) issued an order granting petition for writ of administrative mandamus in the matter of *Bob Rudolph Enterprises v. State Water Resources Control Board* (Case No. CV149342). As required by the Court order, the State Water Board issued Order No. WQ 2006-0006, withdrawing its earlier order and remanding the matter to the Central Coast Water Board for clarification. The Executive Officer issued his revised letter on August 9, 2006.

II. CONTENTIONS AND FINDINGS

Contention: Chevron contends that it should not be held responsible for the continuing investigation and cleanup at the site of its former service station.

Finding: The Executive Officer's letter, as revised on August 9, 2006, is not a final action or separate requirement of the Central Coast Water Board subject to State Water Board review. Only final actions are subject to review.

The letter issued on November 9, 2000, as revised on August 9, 2006, states the Executive Officer's opinion regarding sources of contamination at the two former service station sites. However, the letter does not order any actions pursuant to the statutory authority of the Central Coast Water Board. Instead, the Executive Officer requests (but does not require) submission of a status report and notes an earlier requirement to implement a monitoring and reporting program (MRP).³ The letter specifically states that no measures are being ordered, but that future enforcement actions may be taken pursuant to Water Code sections 13304 and 13267. The Executive Officer's letter does not comprise a final action of the Central Coast Water Board subject to review by the State Water Board. Only final actions taken pursuant to

² State Water Board Order No. WQO 2004-0005, May 20, 2004; *Bob Rudolph Enterprises, Inc. v. State Water Resources Control Board*, Superior Court for the County of Santa Cruz, Case No. CV 149342.

³ The requirement to implement the MRP was set forth in a letter dated September 12, 2000. Chevron had thirty days from that date in which to file a petition seeking review of the MRP requirement contained in that letter. Chevron did not file a petition in response to the letter.

certain enumerated sections and chapters of the Water Code are subject to review.⁴ The letter order as revised on August 9, 2006, does not take or require any action pursuant to the enumerated sections or chapters of the Water Code. Should the Central Coast Water Board take an action pursuant to either Water Code section 13304 or 13267 (or any other reviewable section of the Water Code) regarding the former Chevron site, such final action would be subject to review by petition.

III. CONCLUSION

Because it comprises no new orders or requirements, the letter issued by the Central Coast Water Board Executive Officer is not a final action subject to petition.

IV. ORDER

IT IS HEREBY ORDERED that the petition of Chevron Products Company be dismissed.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 13, 2006.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Song Her
Clerk to the Board

⁴ Wat. Code, § 13320, subd. (a). (Authorizing review of actions “by a regional board under subdivision (c) of Section 13225, Article 4 (commencing with Section 13260) of Chapter 4, Chapter 5 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370), Chapter 5.9 (commencing with Section 13399.25), or Chapter 7 (commencing with Section 13500)”).

DRAFT

October 30, 2006

MJWood/dmw

9-12-06 / revised xdate

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